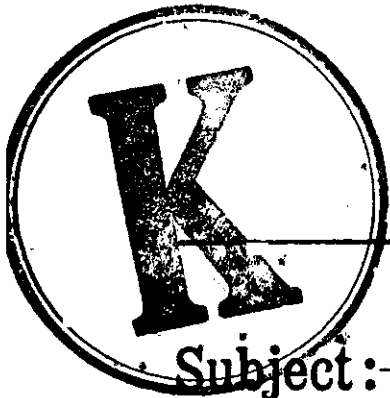


1942

File No. O Motor
Vehicles/42

Legal DEPARTMENT
A BRANCH



Subject:—

Opinion under the
Motor Vehicles Act, 1939

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File No.

O Motor Vehicles/42

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Section 64 of the Motor Vehicles Act, 1939, provides that in the cases mentioned in clauses (a) to (g) of that section, the aggrieved person may, within the prescribed time and in the prescribed manner, appeal to the prescribed authority who shall give such person and the original authority an opportunity of being heard. Section 68(1) provides that a Provincial Government may make rules for the purpose of carrying into effect the provisions of Chapter IV with respect inter alia to (i) the conduct and hearing of appeals that may be preferred under the Chapter and (ii) the authorities to whom, the time within which and the manner in which appeals may be made (vide sub-clauses (a) and (j)). Rules 75 to 77 of the Bombay Motor Vehicles Rules, 1940 make provision for appeals. Rule 75 lays down that the authority to decide an appeal against the orders of the Provincial Transport Authority in respect of matters dealt with in clauses (a), (b), (c), (d), (e) and (f) of section 64 of the Act shall be the Provincial Government and any person preferring an appeal against the orders of the Provincial Transport Authority in respect of any such matter, shall, within thirty days of the receipt of the order, do so in writing to the Secretary to the Provincial Government in the Home Department in the form of a memorandum in duplicate setting forth concisely the grounds of objection to the order of the Provincial Transport Authority, accompanied by a certified copy of that order. Rule 76 makes a similar provision in respect of appeals to the Committee of the Provincial Transport Authority appointed by the Chairman, against the orders of a Regional Transport Authority under clauses (a) to (f) of section 64. Rule 77 provides that after the appellate authority has appointed a time and place for the hearing of the appeal it shall give an intimation to the authority against whose order the appeal is made and the appellant who shall, within fourteen days of the receipt of intimation forward to the appellate authority, a list of documents upon which they propose to rely, together with the copies of such documents in duplicate and may upon the appointed date and at subsequent hearings, appear either in person or through an agent or a representative authorised in writing in this behalf. From the above provisions it will be seen that rule 75 of the Bombay Motor Vehicles Rules, 1940, read with

section 64 of the Motor Vehicles Act, 1939, provides for appeals to the Provincial Government against the orders of the Provincial Transport Authority. There is no provision either in the Motor Vehicles Act or the rules thereunder empowering Government to interfere in revision with an order of the Provincial Transport Authority or the Regional Transport Authority. Jurisdiction by way of appeal or revision will not be inferred but must be expressly given by statute (see Emperor V. Uman Hajin, 54 Bom. 664 at page 666). Consequently it would not be competent for Government to assume revisional jurisdiction and cancel the order of the Regional Transport Authority granting a permit to the Nasik Motor Service Union, Limited.

2. It is no doubt true as observed by the Secretary Provincial Transport Authority, at page 31 ante that the ordinary powers which an appellate authority can exercise are: (a) confirmation, (b) alteration, (c) cancellation or (d) remand but these powers can be exercised by the appellate authority in respect of the order appealed from. There is no appeal made to Government in the present case against the order of the Regional Transport Authority granting a permit to the Nasik Motor Service Union, Limited. The view taken by the Secretary Provincial Transport Authority, in his report at page 29 is not correct.

Sd. P.N.M.
26.1.

Rembrancer of Legal Affairs.

U.R. to H.D. No. 779 dated 27th January 1942.

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Copy of the decision of the Regional Transport Authority,
North Deccan Region, Nasik, on the application dated 14th.
November 1940 on behalf of the Nasik Motor Service Union, Nasik.

Heard Mr. Nadkarni.

ORDER.

"The Regional Transport Authority is of opinion that as the permit has been sanctioned in the name of the applicant, that is the Nasik Motor Service Union, limited, which has been duly registered as a private limited company, no fraud or misrepresentation has been practised against the Regional Transport Authority. The Regional Transport Authority has no grounds for interference. If the applicants are dissatisfied with the constitution, management or ~~other~~ other affairs of the Company, their remedy lies in a proper court of law.

This disposes of the applicant's request that the company's permit should be cancelled.

As regards the applicant's request for a permit for themselves, their individual applications were cancelled at their own request and replaced by a joint application in the name of the private limited company. This request therefore needs no further consideration.

Sd/- D. C. Chambers.

Chairman,
R. T. A., N. D. R. Nasik.

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Office of the R.I.A.

Section 72 of the Motor Vehicles Act, 1939, provides for power of Government to prescribe the limits of weight and limitations on use. Sub-section (3) enacts that no person shall drive or cause or allow to be driven in any public place any motor vehicle or trailer—

(a) the ~~max~~ unladen weight of which exceeds the unladen ^{certificate} weight specified in the ~~certificate~~ of registration of the vehicle or

(b) the laden weight of which exceeds the registered laden weight specified in the certificate of registration, or

(c) any axle weight of which exceeds the maximum axle weight specified for that axle in the certificate of registration.

Section 73 provides:— "Any person authorised etc. may if he has reason to believe that a goods vehicle or trailer is being used in contravention of section 72, require the driver to convey the vehicle to a weighing device, if any, within a distance of one mile from any point etc. and if on such weighing the vehicle is found to contravene in any respect the provisions of section 72 regarding weight, he may by order in writing direct the driver to convey the vehicle or trailer to the nearest place to be specified in the notice, where facilities exist for the storage of goods, not to remove the vehicle or trailer from that place until the laden weight or axle weight has been reduced or the vehicle has otherwise been treated so that it complies with section 72." This section as stated in its marginal note provides for power of a specially authorised person to have the vehicle weighed by a weighing device if any and to enforce compliance with provisions of section 72. The word "may" in section 73 clearly indicates that even if there be a weighing device within the radius of a mile the weighing of any suspected vehicle is not imperative. Consequently if the provisions of sections 72 and 73 of the Act and rule 136 of the Motor Vehicles Rules are read together it will be clear that although weighing of a vehicle under ~~the~~ section 73 would afford reliable evidence of the breach or otherwise of the provisions of section 72, it is by no means

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The only proof and it would be open to an authority to prove by other evidence - to accept or reject which it is for the Court or other competent authority to decide - that the vehicle was used in contravention of the Provisions of section 72. If cotton bales having generally a standard weight are being carried it would be possible to calculate the laden weight of the vehicle concerned with reference to the number of such bales carried; and if on such calculation the vehicle is found to be over loaded in contravention of the limits prescribed under section 72, there would be no legal objection to taking action under that provision even though no weighing was made under section 73. Whether or not to accept such calculation as a sufficient or conclusive proof of breach of the provisions of section 72 in the facts and circumstances of any particular case is another matter; but it is not correct to say that a breach of the provisions of section 72 cannot be proved otherwise than by getting the vehicle weighed under section 73 and Rule 188. (See ~~xxx~~ section 114 of the Indian Evidence Act, 1872). The view taken by the Secretary, H.D. at page 13 ante is correct.

Sd/- P.N. Moos
20.2.

Remembrancer of Legal Affairs.

U.R. to H.D. 1668 dated the 23rd February 1942.

M.V.V.
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Office of the R.L.A.

Seen and returned.

2. Under section 65(3) of the Motor Vehicles Act, 1939, the provisions of Chapter IV relating to the grant, revocation and suspension of permits also apply to the grant, revocation and suspension of countersignatures of permits. Consequently grounds which would justify refusal of a public carrier's permit under section 65 in Chapter IV would equally justify refusal to countersign any such permit. The contentions of the appellants as set out at page 1 ante are not therefore valid. Section 64(d) shows that the Act does contemplate the possible refusal of the Provincial or a Regional Transport Authority to countersign a permit. Whether in the present case the refusal to countersign was justified on merits is for the appellate authority to decide.

Sd. P.R. Moos.
Sd. P.

Membrancer of Legal Affairs.

U.P. to H.D. No. 1865 dated the 2nd March 1942.

M.V.V.
30/4.

Office of the R.L.A.

Rules made or purporting to be made by a Provincial Government under sub-section (8) of section 11 of the Indian Motor Vehicles Act, 1914, requiring or relating to the insurance of motor vehicles being rules in force at the commencement of the Act, shall, until Chapter VIII of the Motor Vehicles Act, 1939, takes effect in the Province, have effect as if enacted in the Act of 1939 (see section 134(3) of the Motor Vehicles Act, 1939). Chapter VIII shall not have effect until the 1st day of July 1943 (see section 1(3) of the Act.). Consequently rule 13A of the Rules made under the Indian Motor Vehicles Act, 1914, which provides for taking out an insurance policy to cover a third party risk before a heavy motor vehicle can be registered, has effect as if enacted in the Motor Vehicles Act, 1939. Since the expression "heavy motor vehicle" has not been defined in the Motor Vehicles Act, 1939, that expression will have to be given the meaning assigned to it under rule 1(3) (d) of the rules framed under the Indian Motor Vehicles Act, 1914. Consequently all vehicles which are heavy motor vehicles as defined in the said rule 1(3)(d) would require to be insured by virtue of rule 13A until 1st July 1943. On this point the view expressed by Deputy Secretary, Home Department, at page 57 ante is correct.

SD/- P.N.H.
4.3.

Remembrancer of Legal Affairs.

U.R. to H.D. No. 1939, dated the 6th March 1942.

E.V.V.
50/4.

Office of the P. L. A.

Under section 64 of the Motor Vehicles Act, 1939, provision is made for an appeal to the prescribed authority who shall give to the appellant and the original authority an opportunity of being heard. The authority prescribed by rule 76 of the Bombay Motor Vehicles Rules, 1940 to decide on appeal against the orders of a Regional Transport Authority under clauses (a) to (f) of section 64 is a committee of three members of the Provincial Transport Authority appointed by the Chairman. Under section 44(1) the Provincial Government is empowered to constitute for the Province a Provincial Transport Authority and Regional Transport Authorities; and these Authorities are the original authorities within the meaning of section 64. Consequently, an appeal against the order of a Regional Transport Authority would lie to the Committee of three members of the Provincial Transport Authority appointed by the Chairman but such committee being an authority prescribed by rule 76 read with section 64 would not be a Provincial Transport Authority constituted under section 44(1) though it consists of some members of such Authority. There is no provision either in the Act or the rules thereunder for a second appeal. Consequently no second appeal to the Provl. Government against the order passed by the Committee appointed under rule 76 would be competent. The view taken by the C.P. Government and concurred in by the Secretary, Provincial Transport Authority in his letter at p.1 ante is correct.

Sd/- P.H. Mehta.
S.O. 4.

Member of Legal Affairs.

U. L. to H. D. No. 5417 dated the 21st April 1942.

M. V. V.

50/4.